

**SUPPLEMENTAL AGREEMENT NO. 1
TO THE
FEDERAL-AID TRANSPORTATION FUND
PURCHASE-SALE AGREEMENT**

Nebraska Department of Roads

City of Lincoln

THIS SUPPLEMENTAL AGREEMENT made and entered into by and between the State of Nebraska, Department of Roads, hereinafter referred to as the "State," and the City of Lincoln hereinafter referred to as Local Public Agency, or "LPA."

RECITALS

WHEREAS, in 2011, LPA and the State entered into a Federal-Aid Transportation Fund Purchase-Sale Agreement (hereinafter referred to as "the Original Agreement") that provided for the State to purchase at a discount LPA's share of certain Surface Transportation Program Funding (hereinafter referred to as "STP") and the Highway Bridge Program (hereinafter referred to as "HBP") federal-aid funds that had been available to Nebraska LPAs; and,

WHEREAS, later in 2012, the federal government passed interim transportation funding legislation which eliminated the HBP category of funds and did not provide a replacement category of funds related solely to bridge replacement, rehabilitation and maintenance; and,

WHEREAS, the parties to this Supplemental Agreement intend to replace the HBP funds, which will no longer be available, with other federal-aid funds in a substantially similar proportional amount to provide LPAs with funds for bridge replacement, rehabilitation and maintenance; and

WHEREAS, it has also become necessary for the parties to further address certain National Bridge Inspection Standards compliance issues.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

SECTION 1. Except for the provisions specifically modified herein, all terms and provisions of the Original Agreement between the State and the LPA remain in full force and effect.

SECTION 2. Section 2 of the Original Agreement entitled "Federal Funds Eligible for Purchase" is hereby superseded and replaced in total and shall hereafter state as follows:

This Agreement applies to the following categories of federal-aid funds: (a) STP Funds (both for Populations less than 5,000, and Populations 5,001 to 200,000), and (b) Federal-aid funds from sources in lieu of the former Highway Bridge Program (HBP) funds. The new Federal Highway Authorization, enacted into law on July 6, 2012,

known as Moving Ahead for Progress in the 21st Century Act (MAP-21), restructured core highway formula programs and eliminated the Highway Bridge Program. Consequently, the State will use historic data as the basis for establishing the total amount of funds that will be eligible for purchase (hereinafter "the Purchase Pool") for the Bridge Funding Category under this agreement. This historic data reflects that the HBP program averaged 10% of the total annual federal-aid funding received by State from FHWA. This method of calculating the Bridge Funding Category will be used for the duration of this Agreement unless a future Federal Highway Authorization re-establishes a separate fund dedicated to the construction or reconstruction of highway bridges. In the event that a fund similar to the former Highway Bridge Fund is re-established by the federal government, then the original agreement language of Section 2 shall automatically be reinstated 30 days after written notice from the State and the changes made in Sections 2 and 3 of this Supplemental Agreement will be null and void and all previous Section 2 language will apply except the name of the new fund will be substituted in for "Highway Bridge Program" in the Original Agreement.

SECTION 3. The references in the recitals and operative sections of the Original Agreement to "HBP" or the "Highway Bridge Program" shall be replaced, modified or interpreted as follows:

- (a) The title of Section 3B of the Original Agreement "HBP Funds Calculation" is hereby superseded and replaced with the title "Bridge Funding Category Calculation."
- (b) The reference in paragraph one of Section 5 of the Original Agreement to "HBP Funds" is hereby superseded and replaced with the phrase "Bridge Funds." The two references to "HBP portions" in the third paragraph of Section 5 of the Original Agreement are hereby superseded and replaced with the phrase "Bridge funding portions."
- (c) All other references to HBP in the Original Agreement shall have no force and effect; however, if the context requires, the reference to HBP is hereby replaced with the phrase "the non-STP federal-aid funds described in Section 2 of this Supplemental Agreement."

SECTION 4. The following shall be added at the end of subsection I of Section 7, of the Original Agreement, which Section is entitled "Bridges:"

The parties to this agreement understand that when any of Nebraska's LPAs fail to comply with the obligations of the National Bridge Inspection Standards (NBIS), or with Federal Highway Administration (FHWA) directive, on a bridge or bridges that are the jurisdictional responsibility of the LPA, the State may be required to expend funds to remedy such LPA bridge non-compliance. LPA agrees that the State may pay the costs to comply with any NBIS non-compliance or FHWA directive from the purchase pool (off the top) under Supplemental Section 2. Additionally, any non-compliant LPA will be subject to any or all of the following sanctions that will continue until the costs have been repaid in full, and LPA's bridge is, or bridges are, in full compliance with NBIS requirements and FHWA directives:

- (a) Each year LPA's share of the purchase pool will be forfeited and returned to the pool for distribution to the other LPAs.
- (b) LPA will not receive any additional federal-aid funds for existing projects to become effective 30 days after written notice to LPA.
- (c) LPA will not be allowed to program any new Federal-aid or State-aid projects, and existing projects will not be advanced, and federal-aid reimbursements will be suspended.

(d) Any State-aid Bridge, State Recreation Road, or Federal-aid funds of LPA held by the State will be retained by the State.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Supplemental Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this ____ day of _____, 2013.

WITNESS:

City of Lincoln

LPA Clerk

By _____

Title _____

EXECUTED by the State this ____ day of _____, 2013.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Mick Syslo, P.E.

Material & Research Division Engineer